

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

—v—

Marino Acosta,

Defendant.

17-cr-712 (AJN)

ORDER

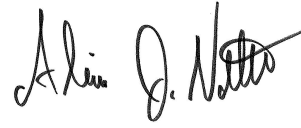
ALISON J. NATHAN, District Judge:

The Court received the attached pro se motion for compassionate release by mail. The Court has redacted portions of exhibits that refer to Mr. Acosta's medical information. The original versions will be provided to counsel and filed under seal.

Pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, and the discretion of the Court, the Court hereby appoints Annalisa Miron to represent Mr. Acosta in connection with his motion for compassionate release. Within three weeks, Ms. Miron should file a supplemental submission on behalf of Mr. Acosta or inform the Court that she requires more time to do so. The Government shall respond within two weeks of the supplemental submission, and Ms. Miron shall have one week from the date of Government's response to reply.

The Clerk of Court is respectfully directed to mail a copy of this Order to Defendant and note that mailing on the public docket.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Alison J. Nathan", with a stylized flourish at the end.

Dated: March 12, 2021
New York, New York

ALISON J. NATHAN
United States District Judge

February 26, 2021

Marino Acosta, 91192-054

FPC Lewisburg

PO Box 2000

Lewisburg, PA 17837

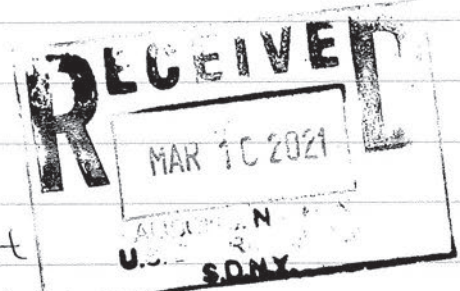
Court Clerk

United States District Court

Southern District of New York

500 Pearl Street

New York, NY 10007



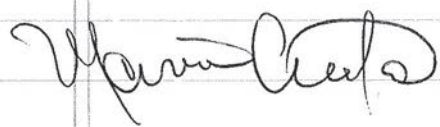
Re: US v. Acosta, Case No. 1:17-CR-712

Dear Clerk:

Please accept the enclosed motion for compassionate release. I originally sent this motion the last week of December 2020, but have recently found that it was never received by the court. I have enclosed a copy of my caption page, if you could please date stamp it as filed and return it to me in the enclosed self-addressed, stamped envelope. I would be most grateful.

Thank you in advance.

Respectfully,

 Marino Acosta

Southern District of New York
United States v. Marino Acosta
Case No. 1:17-CR-00712-AJN-2

Re: Letter Motion for Compassionate Release 18 U.S.C. sec. 3582(c)(1)(A)(i) pursuant to The First Step Act.

Dear Honorable J. Nathan;

I am petitioning this Honorable Court to request Compassionate Release, based upon the changes made to the statute 18 U.S.C. sec. 3582(c)(1)(A)(i), by The First Step Act of December 2018, under "extraordinary and compelling circumstances". I have completed my administrative remedy process, and include proof of denial of relief from the FBOP. See enclosed BP-9 or Warden's Denial of my Administrative Remedy Request. Hence I have met the Exhaustion Requirement. This Honorable Court now has jurisdiction to order my immediate release from Lewisburg USP Satellite Prison Camp ("Lewisburg Camp") and grant me TIME SERVED; with commencement of my supervised release terms and conditions to apply thereafter.

The extraordinary and compelling reasons I request Compassionate Release, amidst the COVID19 pandemic include, but not limited to; 1. The Pandemic and My Health and Safety, 2. The Lewisburg Camp's Recent Massive Outbreak of COVID19, 3. My Low Risk of Recidivism and Lack of Any Danger to the Community or Others.

Although, statute does not allow (28 U.S.C. 994(t)) rehabilitation alone to qualify for compassionate release, it can be considered in conjunction with or synergistic to other factors, and viewed as a whole to meet the "extraordinary and compelling circumstances" requirement under section 3582(c)(1)(A)(i). The United States Sentence Guidelines also have not been amended since passage of the First Step Act; thus what use to be the delineated criteria for Compassionate Release, when the BOP mandated submission of 3582 requests-no longer applies. This Court has wide latitude and discretion to grant relief. This has been done routinely, and robustly during this pandemic. There is ample case law across all District Courts and specifically within the Pennsylvania Federal District Courts., which display such rulings. See United States v. Michael Pabon (E.D. Penn May 2020)(J. Anita Brody). The Honorable Anita Brody of Philadelphia opinion order states the peril of COVID19 faced by inmates at Lewisburg Camp. I am housed in the same prison camp unit that Michael Pabon resided, before she granted him Compassionate Release May 2020, and subject to the same detriments. See U.S. V Pabon (J. Brody) Id.(emphasis added) Courts have relied on the changes the First Step Act placed on section 3582(c)(1)(A) as authority, in addition to, the United States Sentencing Guidelines ("USSG") The U.S.S.G. themselves, also have a built in "catch all" clause of "other circumstances" that aside from the changes to section 3582 pursuant to the First Step Act, Courts have relied on for authority to grant relief. See U.S.S.G. sec. 1B1.13 n.1(D)(emphasis added). Jurisdiction and cause exists, case law supports the ability of Courts to grant relief, and the factual matters at hand, all cut in favor of relief on my behalf.

The medical maladies I suffer from are, both recognized CDC medical risk factors for death and disability via COVID19 infection, and included in my FBOP medical record attached. See enclosed FBOP medical record's (10/28/2020) "Health Problems-Current" to include: 1. Obesity (BMI of 32.0-32.9), 2. Asthma and 3. Pre-diabetes. This is extraordinary and compelling reasons for relief.

The Camp has experienced an outbreak of COVID19, with greater than 60 inmates acutely infected, and antigen positive on rapid nasal swab performance. The total sum of COVID19 positive Camp inmates from this December 10, 2020 florid and uncontrolled outbreak can be verified at www.bop.gov/coronavirus. The ENTIRE Camp was placed in cells at the adjoining USP for a quarantine. Many more Camp inmates came out of quarantine COVID19 positive than who entered. Both those who tested negative AND positive were discharged and re-housed again. The explicitly VULNERABLE and negatively tested Campers, were immediately re-housed with positive COVID19 actively infected Camp inmates. A "Human Petri Dish" of a situation has now been created, and indeed perilous for those with risk factors for death from COVID19 infection, such as myself. I IMPLORE this Honorable Court for granting me IMMEDIATE RELEASE under the Compassionate Release Statute section 3582(c)(1)(A)(i). Residing in this Camp, with an active population of a high number of postively infected inmates places my life in jeopardy, and cuts in favor of Compassionate Release.

The dormitory building I reside is located on the grounds of a Federal Prison Camp ("Lewisburg Camp"), which physically abuts the USP Lewisburg. Staff, facilities, vendors, delivery personnel are shared between the Lewisburg Camp and USP Lewisburg. To date, 88 cases of COVID19 have erupted at USP Lewisburg, to include staff and inmates. I live in a poorly

Southern District of New York
United States v. Marino Acosta
Case No. 1:17-CR-00712-AJN-2

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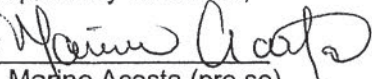
ventilated building that is a primary vector of infectious spread. The dormitory living enclosure, is a "super-spreader" setting, because of its densely populated and shared common facilities composition. Social distancing is impossible. Inmates share common living areas, share eating areas, share common showers, sinks, toilets, phones and computers, recreation equipment and laundry facilities. The ability for adherence to strict hygiene is impossible, and cleaning agents are sparse, chlorine and alcohol based products, are not allowed in a penal setting. It has been widely reported that prisons have a 5.5 times greater transmission rate of COVID19 than the general public. This crowded dormitory prison style setting presents a "Massive Incubator" for viral transmission and infectivity among the inmates. The influenza season is here, and the cold weather descended upon Pennsylvania, thus transmission even more common and likely. As earlier delineated, the Camp has had a large scale COVID19 (12/10/2020) eruption and mass infection of many of the Campers here. IT IS HERE AT THE LEWISBURG CAMP NOW AND MY SAFETY AT RISK FROM EXPOSURE. See www.bop.gov/coronavirus. I would be much safer and face less peril in my own home, where I could self quarantine, adhere to strict hygiene standards, seek medical care within the community, not share common eating, lavatory and sleeping quarters. I fear riding out flu season, in this COVID infested prison camp, shall lead to my demise or death. The BOP's action response plan is to suspend all educational, recreational, and social visits, this keeping inmates penned up like livestock for 23 hours a day in dormitory cubicles not socially distanced and without strict hygiene standards. This BOP created human incubator, is indeed extraordinary and compelling, and falls in favor of Compassionate Release.

The Camp is a MINIMUM security setting and deemed for the FBOP's least dangerous and most trusted inmates. Campers, such as myself, are delineated OUT custody. Home Confinement is an alternative form of OUT custody; thus I am requesting a lateral transition in my custody, and not a decrease in custody status. I am already designated OUT custody with MINIMUM security delineation. The Camp has no fences, physical barriers, armed guards or metal detectors. The Camp is comprised of essentially Trustees and on a honor system to remain imprisoned and not walk off or escape. The Classification Division of the FBOP known as DSSC, has analyzed me and deemed me both -1. OUT custody and 2. MINIMUM custody; thus eligible to be housed at a Federal Prison Camp. I am at the Lewisburg USP Satellite Prison Camp ("Lewisburg Camp") and NOT the USP Lewisburg. I have NO public safety factors, scored the lowest on FBOP custody point count (Minimum/Out Custody), and ascertained eligible for Camp status; thus this reinforces my lack of danger to others if placed on home detention. I meet the criteria for safety to others as delineated under 18 U.S.C. sec 3142(g); hence why I am in an unfenced, open compound styled prison camp, designated for the least dangerous and most trusted among the FBOP population.

I desire to bring to the Court's attention that, I am deemed as both MINIMUM and OUT custody by the DOJ/FBOP, have very serious CDC recognized risk factors, have a verifiable release plan, demonstrated rehabilitation and present a low risk of recidivism, and live in a perilous and highly infectious prison setting- amidst the trifecta of -(i) a Global Pandemic and (ii) Influenza season's coexistence (iii) Active and Current COVID Outbreak at the Camp itself. This cuts in favor of Compassionate Release.

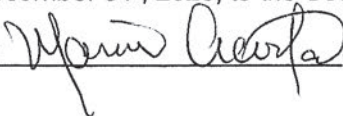
The USP abuts the Camp where I reside, and shares staff and physical facilities, to include inmates here working at the USP and returning to the Camp; thus creating another conduit of infection introduction from the USP to the Camp. I ask to be released for these reasons, and to avoid the enormously infectious environment, that this densely populated minimum security OUT custody correctional setting creates. It is influenza or FLU season and cases spiking. The Camp is under seige now from its first outbreak, while the USP which abuts our Camp and shares staff and vendors, has had 2 major outbreaks. Please see www.bop.gov/coronavirus. I fear that, if not granted compassionate release I will fall prey to this lethal microbe-known as COVID19; therefore implore this Honorable Court for immediate release under 18 U.S.C. 3582(c)(1)(A)(i).

Respectfully submitted,

/s/ 
 Marino Acosta (pro se)
 FPC Lewisburg
 PO Box 2000
 Lewisburg, PA 17837-2000

CERTIFICATE OF SERVICE

I certify under penalty of perjury, that a true and accurate copy of the Motion and Exhibits/Enclosures, were mailed on December 31, 2020, to the Court Clerk's Office.

/s/  (Marino Acosta - Pro Se)

CLF 11/23/20

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Acosta Marino 91192-054 unit 2 LEW
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

I request compassionate release under statute 18 USC 3582 (c) (1) (A) (i), due to covid-19 pandemic and my CDC medical risks of obesity and asthma. Thank you

11/23/20
DATE

Marino Acosta
SIGNATURE OF REQUESTER

Part B- RESPONSE

RECEIVED

NOV 30 2020

ADMIN REMEDY CLERK
USP LEWISBURG

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 1058731-F1

CASE NUMBER: _____

Part C- RECEIPT

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



Admin. Remedy No.: 1058731-F1
Part B- Response

ADMINISTRATIVE REMEDY RESPONSE

This is in response to your request for Administrative Remedy received on November 30, 2020, wherein you request a Compassionate Release due to the COVID-19 pandemic.


Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the BOP, to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition; debilitated medical condition; status as a "new law" elderly inmate, an elderly inmate with medical conditions, or an "other elderly inmate"; the death or incapacitation of the family member caregiver of the inmate's child; or the incapacitation of the inmate's spouse or registered partner.

A review of this matter revealed you do not meet the criteria for a Compassionate Release.

The BOP is taking extraordinary measures to contain the spread of COVID-19 and treat any affected inmates. We recognize that you, like all of us, have legitimate concerns and fears about the spread and effects of the virus. However, your concern about being potentially exposed to, or possibly contracting, COVID-19 does not currently warrant an early release from your sentence. Accordingly, your RIS request is denied.

If you are dissatisfied with this response, you may appeal to the Regional Director, United States Federal Bureau of Prisons, Northeast Regional Office, United States Customs House - Seventh Floor, Second and Chestnut Streets, Philadelphia, PA 19106, within twenty (20) calendar days from the date of this response.

12/3/20
Date


RADM S. Spaulding, Warden

RECEIPT - ADMINISTRATIVE REMEDY

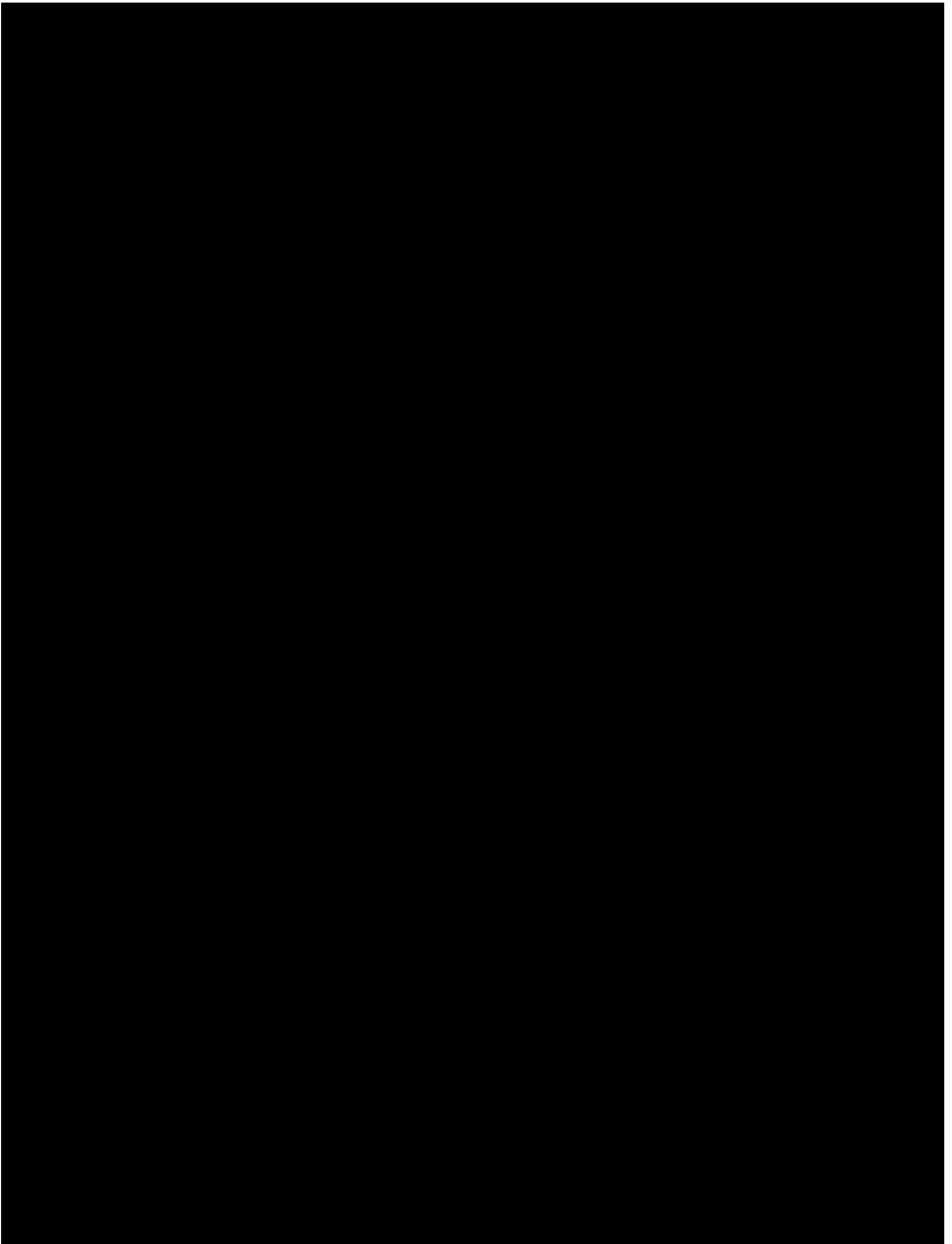
DATE: NOVEMBER 30, 2020

FROM: ADMINISTRATIVE REMEDY COORDINATOR
LEWISBURG USP

TO : MARINO ACOSTA, 91192-054
LEWISBURG USP UNT: LEC QTR: K06-034L

THIS ACKNOWLEDGES THE RECEIPT OF THE ADMINISTRATIVE REMEDY REQUEST
IDENTIFIED BELOW:

REMEDY ID : 1058731-F1
DATE RECEIVED : NOVEMBER 30, 2020
RESPONSE DUE : DECEMBER 20, 2020
SUBJECT 1 : REDUCTION-IN-SENTENCE REQUEST
SUBJECT 2 :



Time Period:

Query:

Actual/Adjusted:

Current Pay Period

Previously Selected Employee(s)

Show hours credited to this period only.

Data Up to Date:

Executed on:

Printed for:

Insert Page Break After Each Employee:

10/31/2019 8:13:32 AM

10/31/2019 8:13AM GMT-04:00

ashreck

Yes

Employee:	ACOSTA, MARINO	ID:	91192054	Time Zone:	Eastern
Status:	Active	Status Date:	6/12/2019	Pay Rule:	Standard FT 6.75
Primary Account	FURNIAWUP/321 AWUP/AW AWUP WH/10/10/-	Start	End		
Date/Time	Apply To	In Punch	In Exc	Out Punch	Out Exc
Xfr/Move: Account	Comment			Xfr: Work Rule	
10/1/2019		7:28:00 AM		10:38:00 AM	
10/1/2019		11:01:00 AM		2:13:00 PM	
10/2/2019		7:30:00 AM		10:48:00 AM	
10/2/2019		11:15:00 AM		2:00:00 PM	
10/3/2019		7:30:00 AM		10:30:00 AM	
10/3/2019		11:00:00 AM		2:00:00 PM	
10/4/2019		7:32:00 AM		10:30:00 AM	
10/4/2019		11:00:00 AM		2:00:00 PM	
10/7/2019		7:32:00 AM		10:30:00 AM	
10/7/2019		10:52:00 AM		2:30:00 PM	
10/8/2019	12:00 AM	Other		10:30:00 AM	
10/9/2019		7:30:00 AM		2:00:00 PM	
10/9/2019		11:00:00 AM		10:30:00 AM	
10/10/2019		7:29:00 AM		2:11:00 PM	
10/10/2019		11:00:00 AM		10:30:00 AM	
10/11/2019		7:30:00 AM		10:30:00 AM	
10/11/2019		11:00:00 AM		2:09:00 PM	
10/14/2019		7:33:00 AM		10:30:00 AM	
10/14/2019		11:00:00 AM		2:15:00 AM	
10/14/2019	12:00 AM	Columbus Day			
10/15/2019	12:00 AM	Other			
10/16/2019		7:32:00 AM		10:30:00 AM	
10/16/2019		11:00:00 AM		2:00:00 PM	
10/17/2019		7:30:00 AM		10:30:00 AM	
10/17/2019		11:00:00 AM		2:00:00 PM	
10/18/2019		7:32:00 AM		10:30:00 AM	
10/18/2019		11:00:00 AM		2:00:00 PM	
10/21/2019		7:32:00 AM		10:30:00 AM	

UNICOR INMATE EARNING STATEMENT				Pay Period: 01/31/2020 Pay Date: 02/02/2020			
INST: 06 FACTORY: AWUP							
GRADE: GRADE3							
CREW: AW AWUP WH							
REG/NAME: 91192054							
MARINO ACOSTA							
GROSS		TAXES		POST TAX DEDUCTIONS		NET PAY	
72.80		-		-		72.80	
YTD:		-		-		72.80	
EARNINGS		RATE		HOURS		AMOUNT	
8010 HOL		0.69		13.50		9.32	
8021 OTHER		0.00		28.75		0.00	
8510 REG		0.69		92.00		63.48	
				DATE COMPUTED			
				HIRE DATE 06/12/2019			
				VACATION DATE 06/12/2019			
				LONGEVITY MONTHS 8.00			
				UNICOR WORK START 06/12/2019			
				ACCURED VAC HOURS 20.84			
				PREV. YRS VAC HOURS 28.75			
				UNPAID CALLOUT			
				STATUS 94			
				DEDUCTIONS/ADJUSTMENT			

LEWLR *
PAGE 001 OF 001 *

INMATE EDUCATION DATA
TRANSCRIPT

* 02-26-2021
* 09:23:56

REGISTER NO: 91192-054
FORMAT.....: TRANSCRIPT

NAME...: ACOSTA
RSP OF: LEW-LEWISBURG USP

FUNC: PRT

----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
LEW	ESL HAS	ENGLISH PROFICIENT	05-02-2018 0900	CURRENT
LEW	GED HAS	COMPLETED GED OR HS DIPLOMA	01-04-2019 0857	CURRENT

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
LEW SCP	FSA NATIONAL PARENTING PROGRAM	07-14-2020	07-23-2020	P	C	P	6
FTD GP	GED E ADV RM232 M-F 0730-0900	12-28-2018	01-04-2019	P	W	I	3
FTD GP	TECHNICAL MATH - EAST	07-01-2018	09-24-2018	P	C	P	24
FTD GP	OSHA 1 - EAST	07-01-2018	09-24-2018	P	C	P	24
FTD GP	ACE LANDSCAPING - EAST	07-01-2018	09-10-2018	P	C	P	24

----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
TABE D	LANGUAGE	9.7	12-07-2018	FTD	10	
	MATH APPL	8.2	12-07-2018	FTD	10	
	MATH COMP	8.4	12-07-2018	FTD	10	
	READING	8.6	12-07-2018	FTD	10	

G0000

TRANSACTION SUCCESSFULLY COMPLETED



Federal
Bureau of
Prisons

U.S. Medical Center for Federal Prisons

1900 W. Sunshine Street
Springfield, MO 65807
417-874-1621

*** Sensitive But Unclassified ***

Name ACOSTA, MARINO	Facility USP Lewisburg	Collected 09/03/2019 07:21
Reg # 91192-054	Order Unit K08-968U	Received 09/04/2019 10:20
DOB 06/04/1978	Provider Chris Lee, MD	Reported 09/04/2019 12:57
Sex M		LIS ID 155192158

HEMOGLOBIN A1C

Hemoglobin A1C	H	5.7	<5.7	%
5.7 - 6.4 Increased Risk				
> 6.4 Diabetes				

FLAG LEGEND L=Low LI=Low Critical H=High HI=High Critical A=Abnormal AI=Abnormal Critical

FPC LEWISBURG

CERTIFIES THAT

MARINO ACOSTA

has successfully completed the requirements for the
National Parenting Program-Phase I, and is therefore awarded this

CERTIFICATE of COMPLETION

July 2020




Z. Pardoe, Teacher

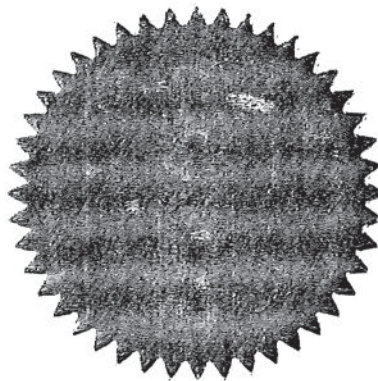
Certificate of Completion
USP Lewisburg, Pennsylvania

MARINO ACOSTA

Completed the

**NON-RESIDENTIAL
DRUG ABUSE PROGRAM**

March 10, 2020




H. Birdsall
Drug Treatment Specialist